

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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UNITED STATES OF AMERICA

Plaintiff,

v.

ESTATE OF CHARLES NOZNESKY, and  
WILLIAM J. GALLAGHER,  
executor of the ESTATE  
OF SARA NOZNESKY,

Defendants.

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CIVIL ACTION NO.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9607 and 9613, for the recovery of response costs incurred by the United States in response to the release or threat of release of hazardous substances at the Kennett Square Junkyard Superfund site (hereinafter the "Site") located in Chester County, Pennsylvania.

### JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606 and 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the release or threatened release of hazardous substances that gives rise to these claims occurred in this district and because the Site is located in this district.

### DEFENDANTS

4. Charles Noznesky was a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). On his death in 1979, defendant estate of Charles Noznesky became responsible for his debts and liabilities. At times relevant to this action Charles Noznesky and his estate were engaged in business in this judicial district. Sara Noznesky is the sole heir of the estate of Charles Noznesky, and, until her death in 1999 was the executrix of his estate. Since her death, no replacement executor has been appointed even though the estate of Charles has not been fully distributed.

5. Defendant William J. Gallagher is sued in his capacity as the executor of the Estate of Sara Noznesky, who died in 1999. As executor, defendant Gallagher is responsible for the debts and liabilities of Sara Noznesky up to the value of the

estate. At times relevant to this action, Sara Noznesky and defendant Gallagher in his capacity as executor have been engaged in business within this judicial district.

#### GENERAL ALLEGATIONS

6. The Site is located in Kennett Township, Chester County, Pennsylvania. From approximately 1958 through 1979, Charles Noznesky owned the Site and operated a scrap yard there. In February 1979, Charles Noznesky died and title to the Site property passed to his sister Sara Noznesky as executrix of his estate and his sole heir.

7. As a result of the scrap yard operations conducted by Charles Noznesky, hazardous substances, including without limitation polychlorinated biphenols ("PCBs"), lead, chromium, cadmium, mercury, dieldrin (a pesticide) and semi-volatile organic compounds were disposed at the Site.

8. After the death of Charles Noznesky, from 1979 through 1983, Sara Noznesky, in her dual capacities as his sole heir and executor of his estate, continued to operate the scrap business, moving materials about the site and selling various items from the site. During this period she held herself out as the owner of the property on which the Site is located.

9. During the period 1979 through 1983, there were further disposals of hazardous substances of the types described

in paragraph 7 at the Site as a result of the operations conducted by Sara Noznesky.

10. In 1999, Sara Noznesky died without having conveyed or otherwise disposed of the site property. Defendant Gallagher was appointed, and continues to serve as, her executor.

11. In response to releases and threatened releases of the forgoing hazardous substances among others, EPA has taken or funded a variety of actions to protect human health and the environment. These actions include the following:

(a) Initial site investigation involving collection and chemical analysis of samples of soil, surface water, and sediment on the Site, as well as sampling and analysis of chemicals contained in some of the numerous, severely weathered 55-gallon drums found at the Site.

(b) Cleanup activities, including sampling, identification, segregation and bulking of hazardous substances found in soils, sediments, drums, cylinders and other vessels; characterization and off-site disposal of such substances; crushing and off-site disposal of empty drums, tanks and cylinders; on-site treatment of hazardous substances; and air monitoring to protect workers and other nearby humans from inhalation of dangerous chemicals. EPA removed from the Site, *inter alia*, approximately 662 tons of soil contaminated with heavy metals, 950 tons of PCB-contaminated soil, 2,515 tons of

PCB-contaminated debris, 110 drums of reactive sulfides, and 1,498 empty drums.

(c) Further inspection, study and sampling to determine the need for additional response actions.

(d) A health consultation analysis performed by the Agency for Toxic Substance and Disease Registry (ATSDR) to determine the extent of the risk posed by the Site to human health.

12. In performing the forgoing response actions and others, the United States has incurred at least \$2.061 million in un-reimbursed costs responding to releases and threats of releases of hazardous substances at the Site. These costs are not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, and were incurred for, inter alia, inspecting, evaluating, assessing, monitoring, sampling and analyzing the release or threat of release of hazardous substances at the Site, and for taking actions (such as those described above) to respond to the releases and threats of release at the Site.

CLAIM FOR RELIEF  
(Cost Recovery)

13. Paragraphs 1 through 12 are re-alleged and incorporated herein by reference.

14. Defendant Gallagher is, and Charles and Sara Noznesky were, persons within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9602(21).

15. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. "Hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) were disposed of at the Site.

17. There has been a "release or threatened release," as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances into the environment at the Site.

18. Charles Noznesky was the owner and operator of a facility (the Site) at the time hazardous substances were disposed of there and from which there is a release or threatened release of hazardous substances which has caused and is causing the incurrence of response costs. 42 U.S.C. § 9607(a)(2).

19. Defendant estate of Charles Noznesky is responsible for the liabilities of Charles Noznesky.

20. By virtue of being sole heir of Charles Noznesky and executrix of his estate, which included the Site property, Sara Noznesky was the owner of a facility (the Site) at the time hazardous substances were disposed of there and from which there is a release or threatened release of hazardous substances which has caused and is causing the incurrence of response costs. 42 U.S.C. § 9607(a)(2).

21. As executor of the estate of Sara Noznesky, Defendant Gallagher is responsible, up to the value of the estate of Sara Noznesky, for her liabilities.

22. At the time of her death, Sara Noznesky was the owner of the Site. Accordingly, defendant Gallagher, in his capacity as executor of her estate is the current owner of the Site and is a liable party pursuant to CERCLA Section 107(a)(1). Such liability is limited by the value of the estate.

23. The United States has incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, and defined by Section 101(23) and (25) of CERCLA, 42 U.S.C. § 9601(23) and (25), as a result of the release or threat of release of hazardous substances from the Site.

24. The United States' actions at the Site were "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

25. The costs incurred by the United States in conducting the response actions were incurred in a manner not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

26. The United States will continue to incur response costs in connection with the Site until the Site is cleaned up and all response costs are paid by responsible parties.

27. Defendants are jointly and severally liable to the United States for the payment of response costs incurred by the United States as a result of the response actions taken at the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, the United States of America requests that this Court enter a judgment against Defendants as follows:

A. Order defendants to pay all response costs incurred by the United States in response to the release and threat of release of hazardous substances at the Site, subject to the limitation that defendant Gallagher shall not be required to pay amounts in excess of the value of the estate of Sara Noznesky;

B. Enter a declaratory judgment under Section 113(g) (2) of CERCLA, 42 U.S.C. § 9613(g) (2), against defendants on liability that will be binding on any subsequent action to recover further response costs or damages;

C. Award Plaintiff its costs and disbursements in this action; and

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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